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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RICHARD NOLL, Individually and on)
behalf of all others similarly situated,) CASE NO. 5:11-CV-04585-EJD
Plaintiff,)
v.)
EBAY INC.,)
Defendant.)
Judge: Hon. Edward J. Davila
Courtroom: 4, 5th Floor
Trial Date: Not yet set
)

This Stipulation is entered into pursuant to Local Rule 7-12, by and between Plaintiffs Richard Noll (“Noll”) and Rhythm Motor Sports, LLC (“Rhythm”) and Defendant eBay Inc. (“eBay”) (collectively, the “Parties”), by and through the respective undersigned counsel.

1 WHEREAS, on July 10, 2012, Rhythm filed its Notice of Motion and Motion to
2 Intervene, for Joinder and/or for Substitution *Pro Tanto* (“Motion to Intervene”) [Doc. No. 69]
3 and simultaneously filed a separate lawsuit against eBay styled *Rhythm Motor Sports, LLC v.*
4 *eBay Inc.*, Cause No. CV12-03601 PJH, in the United States District Court for the Northern
5 District of California (the “Separate Rhythm Lawsuit”);
6

7 WHEREAS, on September 4, 2012, the Court entered an Order [Doc. No. 83] granting
8 the Motion to Intervene;

9 WHEREAS, on September 18, 2012, Rhythm filed its Original Class Action Complaint
10 in Intervention herein asserting the same claims that Rhythm has asserted in the Separate
11 Rhythm Lawsuit;

12 WHEREAS, the Parties agree that, for purposes of judicial economy and efficiency,
13 Rhythm’s claims should be litigated in this Action, rather than the Separate Rhythm Lawsuit;

14 WHEREAS, although the Parties disagree as to whether Rhythm’s claims and the claims
15 of the class it proposes to represent relate back to a date prior to July 10, 2012, for purposes of
16 the applicable statutes of limitations, the Parties nevertheless agree that all applicable statutes of
17 limitations governing such claims were fully and properly tolled as of the filing of the Separate
18 Rhythm Lawsuit on July 10, 2012;

19 WHEREAS, the Parties agree that if Rhythm voluntarily dismisses the Separate Rhythm
20 Lawsuit, Rhythm’s ability to pursue its claims in this case should be the same as if it were
21 asserting those claims within the Separate Rhythm Lawsuit and that the statutes of limitations
22 governing Rhythm’s claims and the claims of the class asserted herein should therefore be
23 deemed to have been tolled effective no later than July 10, 2012;

WHEREAS, in order to facilitate the dismissal of the Separate Rhythm Lawsuit, the Parties wish to set forth their agreement regarding the applicability of any statute of limitations defenses to Rhythm's claims:

NOW THEREFORE, for purposes of any statute of limitations defense that may be asserted with respect to the claims asserted by Rhythm or the class it proposes to represent herein, the Parties agree and request that the Court enter an order that the running of any applicable statute of limitations shall be considered tolled as of no later than July 10, 2012. This stipulation is without prejudice to the Parties' respective positions regarding whether the statutes of limitations governing Rhythm's claims were tolled prior to July 10, 2012, or whether the assertion of Rhythm's claims relates back to a date prior to July 10, 2012, and the Parties expressly reserve their rights regarding such issues. Any issues regarding the tolling of limitations or the relation back of Rhythm's claims prior to July 10, 2012, shall be subsequently presented to the Court by the Parties when such a determination becomes necessary and appropriate.

IT IS SO STIPULATED.

Dated: September 20, 2012.

FIGARI & DAVENPORT, LLP

/s/ Keith R. Verges

Keith R. Verges

Attorneys for Plaintiff RICHARD NOLL

Dated: September 20, 2012.

COOLEY LLP

/s/ Whitty Somvichian

Whitty Somvichian

Attorneys for Defendant EBAY INC.

1 Additional attorneys:

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23 PURSUANT TO STIPULATION IT IS SO ORDERED:

24 Dated: 9/24/2012



25 UNITED STATES DISTRICT JUDGE

1 **1 FILER'S ATTESTATION:**

2 Pursuant to General Order No. 45, 5X(B) regarding signatures, I attest under penalty of
3 perjury that the concurrence in the filing of this document has been obtained from its signatories.
4

5 /s/ Keith R. Verges
6 Keith R. Verges
7 *Attorneys for Plaintiffs RICHARD NOLL and*
8 *RHYTHM MOTOR SPORTS LLC*

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that all counsel of record will be served with a copy of this document via
11 the Court's CM/ECF system pursuant to the local rules of this Court on this 20th day of
12 September, 2012.
13

14 /s/ Keith R. Verges
15 Keith R. Verges
16 *Attorneys for Plaintiffs RICHARD NOLL and*
17 *RHYTHM MOTOR SPORTS, LLC*